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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,101	01/20/2004	Donald R. Loveday	1999U026.RE.US	4294

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UNIVATION TECHNOLOGIES, LLC
5555 SAN FELIPE, SUITE 1950
HOUSTON, TX 77056

EXAMINER	
CHEUNG, WILLIAM K	

ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
10/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/761,101	LOVEDAY ET AL.	
	Examiner	Art Unit	
	WILLIAM K. CHEUNG	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *9/24/08*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,7-10,12,15,17,19-21 and 49* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,7-10,12,15,17,19-21 and 49* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination

1. The request filed on September 24, 2008 for a Request for Continued Examination (RCE) under 37 CFR 1.53(d) based on parent Application No. 10/761101 is acceptable and a RCE has been established. An action on the RCE follows.

2. In view of the amendment filed September 24, 2008, claims 2-6, 11, 13-14, 16, 18, 22-48 have been cancelled, and new claim 49 has been added. Claims 1, 7-10, 12, 15, 17, 19-21, 49 are pending.

3. In view of the amendment filed September 24, 2008, the rejection of Claims 1, 7-10, 12, 15, 17, 19-21 under 35 U.S.C. 112, second paragraph, is withdrawn.

4. In view of the amendment filed September 24, 2008, the rejection of Claims 1, 7-10, 12, 15, 17, 19-21, 49 under 35 U.S.C. 102(b) as being anticipated by Sugimura et al. (JP 10-330412), English translated, is withdrawn.

5. In view of the amendment filed September 24, 2008, the rejection of Claims 1, 7-10, 12, 15, 17, 19-21, 49 under 35 U.S.C. 102(b) as being anticipated by Sugimura et al. (JP 10-330416), is withdrawn.

6. In view of the amendment filed September 24, 2008, the rejection of Claims 1, 7-10, 12, 15, 17, 19-21, 49 under 35 U.S.C. 102(b) as being anticipated by Imuta et al. (WO 98/34961), is withdrawn.

7. In view of the amendment filed September 24, 2008, the rejection of Claims 1, 7-10, 12, 15, 17, 19-21, 49 under 35 U.S.C. 102(e) as being anticipated by Imuta et al. (US 6,255,419), is withdrawn.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1, 7-10, 12, 15, 17, 19-21, 49 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-38 of U.S. Patent No. 6,271,325 in view Ewen et al. (US 4,530,914). Regarding the claimed invention, the invention of claims 1-38 of U.S. Patent No. 6,271,325 clearly teach the invention that relates to a polymerization process involving a tridentate catalyst that is substantially identical to the one as claimed.

The difference between the invention of claims 1-38 of U.S. Patent No. 6,271,325 and the invention as claimed is that the invention of claims 1-38 of U.S. Patent No. 6,271,325 does not involve a second metallocene catalyst.

However, Ewen et al. (col. 2, line 24 to col. 3, line 2; col. 10, claim 3) clearly teach a polymerization process involving using at least two or more metallocene catalyst. Motivated by the expectation of success of developing a polymerization process that can be used to produce a broad and multimodal molecular with distribution (col. 1, line 5-10), it would have been obvious to one of ordinary skill in art to incorporate the second metallocene catalyst teaching od Ewen et al. into the invention of claims 1-38 of U.S. Patent No. 6,271,325 to obtain the invention as claimed.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 1, 7-10, 12, 15, 17, 19-21, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over McConville et al. (US 6,271,325), in view of Ewen et al. (US 4,530,914).

McConville et al. (abstract; col. 14, claim 1) disclose an olefin polymerization process in the gas phase or slurry phase comprising a catalyst in the presence of an activator that is substantially identical to the catalyst system as claimed. McConville et al. (col. 15, claims 16, 17) clearly teach a polymerization process involving ethylene and propylene. Regarding the claimed comonomers, McConville et al. (col. 6, line 41-49) clearly teach a copolymerization process involving comonomers having four or more carbons.

The difference between the invention of claims 1, 7-10, 12, 15, 17, 19-21, 49 and McConville et al. is that McConville et al. do no teach a process involving a second metallocene catalyst.

However, Ewen et al. (col. 2, line 24 to col. 3, line 2; col. 10, claim 3) clearly teach a polymerization process that involves using at least two or more metallocene catalysts. Motivated by the expectation of success of developing a polymerization process that can be used to produce a broad and multimodal molecular with distribution (col. 1, line 5-10), it would have been obvious to one of ordinary skill in art to incorporate the second metallocene catalyst teaching of Ewen et al. into McConville et al. to obtain the invention as claimed.

12. Claims 1, 7-10, 12, 15, 17, 19-21, 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsunaga (US 6,294,495) in view of Ewen et al. (US 4,530,914).

Matsunaga (abstract; col. 2, line 3-48) discloses tridentate structure as defined by formula (A). Matsunaga (col. 8, line 20-25) clearly indicates that the polymerization process can be carried out in liquid phase, such as solution, slurry, suspension, bulk phase or combination thereof. Regarding the claimed activator, Matsunaga (col. 5, line 18-65) clearly teach the use of a co-catalyst (or activator). Regarding the claimed comonomers, Matsunaga (col. 9, line 40-49) disclose comonomers having the number of carbons that clearly met the feature of claim 13.

The difference between Matsunaga and the invention as claimed is that Matsunaga does not involve a second metallocene catalyst.

However, Ewen et al. (col. 2, line 24 to col. 3, line 2; col. 10, claim 3) clearly teach a polymerization process involving using at least two or more metallocene catalyst. Motivated by the expectation of success of developing a polymerization process that can be used to produce a broad and multimodal molecular with distribution (col. 1, line 5-10), it would have been obvious to one of ordinary skill in art to incorporate the second metallocene catalyst teaching of Ewen et al. into Matsunaga to obtain the invention as claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/William K Cheung/
Primary Examiner, Art Unit 1796

William K. Cheung, Ph. D.
Primary Patent Examiner
September 29, 2008